

May 18 2 29 PM '95
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-67

In the Matter of

Amendment of Section 73.202(b). RM-8624
 Table of Allotments.
 FM Broadcast Stations.
 (Greenfield and Stockton,
 Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 1995;

Released: May 18, 1995

Comment Date: July 10, 1995

Reply Comment Date: July 25, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KYOO Communications ("petitioner"), requesting the allotment of Channel 299A at Stockton, Missouri, and deletion of vacant Channel 299A at Greenfield, Missouri. Petitioner submitted information in support of the proposal and stated its intention to apply for Channel 299A at Stockton, if allotted.

2. In support of its request, petitioner states that Channel 299A at Stockton will provide a first aural service. Stockton has a population of 1,579 people and is a community far removed from any metropolitan area. Stockton is the county seat of Cedar County which has a population of 12,093 people. According to petitioner, there is ample room for an antenna site that will provide a 70 dBu service contour over the entire community with no line of sight problems. Petitioner, in support of its request to delete Channel 299A at Greenfield, argues that the community of Greenfield can not financially support a radio station. In the past, licensees attempted to program and market the Greenfield station as a Springfield, Missouri facility in an attempt to earn additional revenue.¹ However, since the Greenfield station, as a Class A facility, could not provide full service to Springfield, the additional revenue needed for the station to survive never materialized. The Springfield area has since seen an explosion of new broadcast

stations and facility upgrades that provide competitive services to that market, making the economic viability of an FM station operating in Greenfield practically impossible.

3. We believe petitioner's request warrants consideration because the proposed allotment at Stockton would provide the community with its first local broadcast service. Channel 299A can be allotted to Stockton in compliance with the Commission's spacing requirements provided there is a site restriction 8.5 kilometers (5.3 miles) west of the community.² The site restriction will prevent a short spacing to Station KCLQ, Channel 300C2, Lebanon, Missouri. To accommodate Channel 299A at Stockton, it is necessary to delete vacant Channel 299A at Greenfield, Missouri.³ We shall seek comments as to whether we should delete Channel 299A at Greenfield, Missouri, to accommodate the allotment of Channel 299A at Stockton, Missouri. If an expression of interest is filed during the comment cycle in this proceeding, we would retain Channel 299A in Greenfield and open a filing window for the channel.⁴ It is Commission policy not to delete a channel in which interest has been expressed. However, if no interest is expressed for retention of a channel in Greenfield, we shall delete Channel 299A to accommodate the allotment at Stockton.

4. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following communities:

City	Channel No.	
	Present	Proposed
Greenfield, Missouri	299A	---
Stockton, Missouri	---	299A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **July 10, 1995**, and reply comments on or before **July 25, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III
 5519 Rockingham Road-East
 Greensboro, North Carolina 27407

¹ We note that in 1981, the licensee of Station KRFG, Channel 228A, John A. Watkins, President of Watkins Investment Company, requested reallocation of Channel 228A from Greenfield, Missouri, to Springfield, Missouri, and modification of its license to specify Springfield as the community of license. See BC Docket 81-503. The reallocation was denied as John A. Watkins withdrew the proposal because the rules, at that time, required the channel be made available to competing applicants.

² The coordinates for Channel 299A at Stockton are 37-42-22 and 93-53-21.

³ The *Report and Order* in MM Docket 92-49 substituted Channel 299A for Channel 228A at Greenfield, Missouri, and modified the license for Station KXBR to specify operation on Channel 299A. See 8 FCC Rcd 734 (1993). However, on April 6, 1994, the Commission cancelled the license for Station KXBR and deleted the call sign.

⁴ A staff engineering analysis indicates that Channel 265A could be considered as a substitute channel at Greenfield, Missouri, should interest be expressed in retention of a channel in the community.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.